we have adopted, that might afford some reason for doubting its applicability. But usage has uniformly conformed to it, and, so far as we have any legislation bearing upon the subject, it recognizes the rights of private owners fully. The charter of Detroit, passed in 1827, contained the following provisions: "That nothing in this act contained shall be construed to vest in the said corporation, or any officers thereof, any right to the water, or the land under the water, in front of the farms included within the said city; nor any power to erect, or cause or authorize to be erected, any wharf or other thing on the said land; *but the right of the proprietors of the said farms to the water and land in front of said farms, and to fill in the water and erect fixtures thereon, shall remain and vest in said proprietors the same as if this law had not passed.*" R. L. of 1827, p. 588, § 49. This provision was preserved in terms until the passage of the new charter of 1857, which indirectly recognizes the same principle, by giving to the city power to regulate navigation, and to build wharves on their own property, but, as to all other property, merely to establish a line beyond which wharves shall not extend. L. 1857, p. 95. The right of individuals has been constantly asserted and exercised.

We think that the plaintiff has, under his lease, a legal interest in the land covered with water, which will support the action of trespass; and that the hindrance in taking ice was the proper subject of damages under the case presented.

The other Justices concurred. Ordered to be certified accordingly.

In the Supreme Court of Pennsylvania—At Pittsburgh, October 31, 1859.

COMMONWEALTH *vs.* REED ET AL.

1 Works of internal improvement, erected at the expense and by the officers of the State, for the benefit of the citizens at large, never can be regarded by the law as a nuisance; and their transfer to the hands of a private company, with a requirement that they shall be kept up for the purposes of their creation, in no respect changes their character.

2. The Commonwealth and its agents could not have been indicted therefor, and the company and its officers occupy precisely the same position.

Error to the Quarter Sessions of Crawford county.

J. W. Farrelly, for plaintiff in error.

Finney and Douglass, contra.

The facts are sufficiently stated in the opinion of the court, which was delivered, Oct. 31, 1859, by

READ, J.—The President and Directors of the Erie Canal Company are indicted for a public nuisance, for keeping up and maintaining a certain pond and reservoir as a part of their canal, by damming the southern end of the Pymatuning swamp, by means of which seven hundred acres of land are overflowed, and the waters in the said pond and reservoir have become stagnant, putrid and noxious, from whence unwholesome damps and smells arise, and the air is greatly corrupted and infected, to the great damage and nuisance of the citizens of the Commonwealth. There is also an allegation that the pond and reservoir are not necessary for the purposes of the canal, and ought to be dispensed with as useless and injurious. To this indictment the defendants have pleaded specially, that the pond and reservoir are a part of the internal improvements of the Commonwealth called the Erie Division of the Pennsylvania Canal, which was constructed by the Commonwealth for a public highway, and that the alleged nuisance was created, constructed and erected by the authority, and in pursuance of laws of the General Assembly of this Commonwealth, by the officers, engineers and agents thereof, lawfully created, appointed and employed therefor, for the purpose of securing and furnishing sufficient water for the supply of the said Erie Division of the Pennsylvania Canal, and that the said defendants are in possession of the said pond and reservoir, in pursuance of the act authorizing the Governor to incorporate the Erie Canal Company, as directors of said company; and by the terms of the Act of Incorporation they are obliged to keep up the alleged nuisance for the purposes of the canal, in order that it may remain a public highway, and for the protection of the property reserved by the Commonwealth. To this plea there is a general demurrer.

This indictment, it will be perceived, is not against the corporation, but against its officers, but no difficulty has been made on this

point by the defendants, and the question has been argued upon the broad ground, whether upon the facts declared in the pleadings this is a public nuisance. The indictment shows that the works complained of were connected with the Erie Canal, and the plea shows that they were constructed by the Commonwealth as a necessary part of the Erie Division of the Pennsylvania Canal, and are held by the Erie Canal Company, as the grantees of the State, and are to be kept up by them in order that the canal may remain a public highway.

We should suppose, that works of internal improvement, erected at the expense, and by the officers of the State, for the benefit of the citizens at large, never could be regarded by the law as a nuisance, for the sovereign authority has expressly intended them to advance the prosperity of the community. If this be so, how is it possible that their character should be entirely altered by being placed in the hands of a private company, with an express requirement that they should be kept up for the purposes of the canal, in order that it may be and remain a public highway. The Commonwealth and its agents could not have been indicted, and it seems clear, that the company and its officers occupy precisely the same position.

It would indeed be strange that any legal proceedings could be instituted, in a county through which a great public work passes, by which the whole purposes of the improvement might be destroyed, upon the single allegation, that what has been constructed under the express authority of the legislature is a great public nuisance.

It will be observed, that it is not alleged that there is any damage to property (that no doubt has been paid for by the Commonwealth) but that it is injurious to the health of the inhabitants residing there. It appears by the indictment that it was originally a swamp, but whether healthy or otherwise is not stated.

Now this general charge would have applied equally well to every canal or slackwater navigation in the State, whether built by the State or private companies, to the whole line of the Pennsylvania Canal, whether on the Juniata or the branches of the Susquehanna, or west of the mountains, or on the Delaware, to the Schuylkill navigation, and to a host of similar works. Every dam under the

act of 1803, and every common mill dam would be open to the attack of the public prosecutor. The inevitable consequences of changing the course and current of rivers and streams by dams and obstructions, is to occasion a kind of malaria, in the first instance, which disappears generally in a few years. The same effect is produced in the outskirts of our cities, by the opening up of the fresh earth in the progress of improvement, until the district is graded, paved, and properly drained.

Upon the principle of this indictment, the rice plantations of Georgia and of Louisiana should be abated.

The judgment is affirmed.

In the Supreme Court of Pennsylvania—At Pittsburgh, Nov. 1859.

STOKELEY *vs.* THOMPSON.[1]

1. Where, in a bond, interest is made payable annually, and there is a failure to pay it when due, interest on the unpaid interest is not recoverable without a special agreement to that effect.
2. Whether an agreement to pay interest on interest, in order to be good, must be made subsequently to the original obligation or not, or what constitutes its precise consideration, not determined.

Error to the Common Pleas of Greene county.

The facts are sufficiently detailed in the opinion of Mr. Justice Thompson.

Downey and Rowe, for plaintiff in error, cited *Dodye* vs. *Perkins*, 9 Pick. 368; *People* vs. *New York*, 5 Cowen, 331; *Boker* vs. *Fisher*, 4 Wh. 516; *Miller* vs. *Bank of Orleans*, 5 Wh. 503; *Faieholt* vs. *Reed*, 15 S. & R. 266; *Hamilton* vs. *LaGrange*, 2 H. Bl. 144; *Greenleaf* vs. *Kellogg*, 2 Mass. 568; *Freye* vs. *Watson*, 5 S. & R. 220; *Pawling* vs. *Pawling*, 4 Yeates, 220; *Bainbridge* vs. *Wilcox*, 1 Bald. 536.

Sayers for defendant in error, explained cases cited above of *Hamilton* vs. *Le Grange*, and *Pauling* vs. *Pauling*, and cited *Sparks* vs. *Garrigues*, 1 Bin. 165, 7 Greenleaf, 78; *Connecticut* vs. *Jackson*, 1 J. C. Rep. 14; *Renshooten* vs. *Lawson*, 6 J. C. Rep. 313, 4 Rand. 408, 411.

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[1] We are indebted to the Pittsburgh Legal Journal for this case.—*Eds. Am. L. Reg.*